

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

1998 Biennial Regulatory Review -)
Streamlined Contributor Reporting)
Requirements Associated with) CC Docket No. 98-171
Administration of)
Telecommunications Relay Services,)
North American Numbering Plan,)
Local Number Portability, and)
Universal Service Support)
Mechanisms)

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF BLOOSTON, MORDKOFKY, JACKSON & DICKENS

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CARRIERS LISTED IN
ATTACHMENT A**

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SUMMARY

Blooston, Mordkofsky, Jackson & Dickens, on behalf of the 53 telecommunications carriers listed in Attachment A (collectively "BMJD"), applauds the Commission's decision to consolidate the worksheets used for the universal service, Telecommunications Relay Service (TRS), North American Number Plan Administration (NANPA) and number portability programs, thereby creating a new Telecommunications Reporting Worksheet (Worksheet). BMJD requests changes to and clarification of the FCC's proposed Worksheet design and rules to facilitate the use of the Worksheet by small and mid-sized telecommunications carriers. These comments address the Worksheet lines concerning the: D.C. Agent; Contributor Revenue Information; Calculation of Number Portability Administration Contribution, and TRS and NANPA Contributions; Section 43.21 Information; Services Accessible by Individuals with Disabilities; and Confidentiality. In addition, BMJD requests clarification or modification to the proposed rules concerning: Contribution Checks; Due Dates; USAC Exemption Certification and Calculation; Electronic Filing; Interest for Improper Filing and Overdue Contributions; and Information to Be Disclosed by the Commission.

BMJD also supports the Commission's NOI which seeks further consolidation of contributions.

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COMMENTS OF BLOOSTON, MORDKOFSKY, JACKSON & DICKENS

Blooston, Mordkofsky, Jackson & Dickens, on behalf of the 53 telecommunications carriers listed in Attachment A (collectively "BMJD"), respectfully submits these comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry, FCC 98-233, released September 25, 1998 [hereinafter NPRM and NOI]. BMJD applauds the Commission's decision to consolidate the worksheets used for the universal service, Telecommunications Relay Service (TRS), North American Number Plan Administration (NANPA) and number portability programs, thereby creating a new Telecommunications Reporting Worksheet (Worksheet). The existing duplicative and ever-changing worksheets have led to much confusion among carriers, and duplicative effort in completing the worksheets. BMJD requests changes to and clarification of the FCC's proposed Worksheet design and rules to facilitate the use of the Worksheet by small and mid-sized telecommunications carriers.

These comments address the Worksheet lines concerning the: D.C. Agent; Contributor Revenue Information; Calculation of Number Portability Administration Contribution, and TRS and NANPA Contributions; Section 43.21 Information; Services Accessible by Individuals with Disabilities; and Confidentiality. In addition, BMJD requests clarification or modification to the proposed rules concerning: Contribution Checks; Due Dates; USAC Exemption Certification and Calculation; Electronic Filing; Interest for Improper Filing and Overdue Contributions; and Information to Be Disclosed by the Commission.

BMJD also supports the Commission's NOI which seeks further consolidation of contributions.

INTEREST OF BMJD

The 53 telecommunications carriers listed in Attachment A include local exchange carriers, cellular carriers and paging providers. Each of them is affected by the Commission's requirements to make contributions to the universal service, NANP and TRS funds. They seek clear, easy-to-follow instructions, the elimination of unnecessary costs of compliance, and confidentiality of their revenue data.

PROPOSED NEW WORKSHEET

BMJD's comments on the proposed Worksheet, Instructions and associated rules are presented in the order of the corresponding

lines in the proposed Worksheet, followed by comments on several related issues.

Block 2, Line 118: D.C. Agent

BMJD requests the Commission to select one address as the mailing address to be used when the Worksheet is submitted to designate a D.C. Agent or to update information concerning such designation.

The Commission proposes to permit carriers to use the Worksheet to indicate the identity of their D.C. Agent for Service of Process. The Worksheet can be used for this purpose at the time of the annual filing of the Worksheet, and it can be used to update information concerning the D.C. Agent at any other time during the year. In the latter case, the instructions for Line 118 state that the carrier must notify "one of the administrators." But Figure 3 of the Instructions states that the Telecommunications Reporting Worksheet should be filed with the Chief of the Formal Complaints and Investigations Branch of the Common Carrier Bureau.¹ The Commission should specify one address to which the Worksheet must be sent for designating a D.C. agent or updating the corresponding information. The designation of one address would be consistent with the Commission's proposal to require carriers to file the Worksheet

¹ Instructions at 11.

"at one location."² The best solution would be to have one address for the April 1 filing, the September 1 filing and all D.C. Agent filings.

The Instructions concerning the designation of a D.C. Agent also should state that carriers do not need to complete Lines 118 to 127 if the information has not changed.³ This modification to the Instructions would simplify the completion of the Worksheet.

Block 3: Contributor Revenue Information

The Instructions for Column (a) in Block 3 state that Worksheets due on September 1 report revenues billed during January 1 to June 30 of the same calendar year. The Instructions go on to state:

If the Worksheet is due by April 1, 1999, contributors should submit revenues billed during the calendar period January 1 through December 31, 1999.

It appears that the latter "1999" should be replaced with "1998."

Block 4: Calculation of Number Portability Administration Contribution

Number portability costs should not be imposed on carriers that are not required to provide number portability. The FCC proposes to use the Worksheet to calculate contributions for number portability administration by all telecommunications

² NPRM para. 31.

³ Instructions at 10.

carriers. But not all telecommunications carriers will need to provide number portability. Specifically, the FCC exempted many wireless providers, including paging and other messaging service providers, private paging service providers, business radio service providers, providers of land mobile service on 220-222 MHz, public coast stations, public land mobile service providers, 800 MHz air-ground radio-telephone service providers, offshore radio service providers, mobile satellite service providers, narrowband PCS service providers, local Specialized Mobile Radio (SMR) licensees, and local multipoint distribution service (LMDS) providers.⁴ Telecommunications carriers that are not required to provide number portability should not be required to contribute to the number portability administration, because they are not the cost-causers.

The Commission previously recognized that contributions may not be appropriate for some telecommunications carriers, such as carriers that do not have end-user revenues.⁵ In adopting a flat \$100 fee for these carriers, the Commission stated that the fee would not give such carriers an appreciable, incremental cost advantage because they are not competing with other carriers for subscribers.⁶ The Commission similarly has stated that the wireless services listed above that are exempt from number

⁴ See Third Report and Order, Telephone Number Portability, CC Docket No. 98-116, FCC 98-82, para. 19, released May 12, 1998.

⁵ Id. para. 113.

⁶ Id.

portability requirements have little impact on competition.⁷

Thus, just as the Commission provided for a \$100 contribution for carriers without end-user revenues, the Commission should provide capped, if not zero, contributions for the wireless carriers that are exempt from number portability requirements, because this fee structure will have no competitive impact for either group of carriers.

In addition, the customers of these wireless carriers will not reap the benefits of number portability. For example, because one-way paging is not subject to number portability, paging customers will not be impacted by number portability. Their numbers will not be ported, and they cannot make outgoing calls to ported numbers. The cap on the contributions of carriers that do not provide number portability would be consistent with the fact that they do not benefit from number portability.

At most, the contributions for these wireless carriers should be \$100 per carrier, which is the same as the amount to be contributed by carriers without end-user revenues. Also, just as the Commission proposes to eliminate the mandatory minimum contribution for TRS and NANP purposes,⁸ the Commission should

⁷ See First Report and Order and Further Notice of Proposed Rulemaking, Telephone Number Portability, 11 FCC Rcd. 8352 para. 156 (1996).

⁸ NPRM para. 50.

permit these wireless carriers to pay less than \$100 if their calculated contribution would be less than \$100.

Although the NPRM focuses on the Worksheet itself, a reconsideration of the contributions for number portability purposes is warranted, given that the Commission also is reconsidering the revenue bases for contributions to the TRS and NANP funds, thereby exempting some carriers from contributing to those funds.⁹

Block 4, Lines 304(a) to 311(a)

Lines 304 to 320 of the Worksheet require unnecessarily complex calculations for determining a carrier's contribution to number portability. The revenue amounts to be recorded in Column (a) of Lines 304 to 311 appear to have no use and should be eliminated. If Column (a) were eliminated, Column (c) of those lines also could be eliminated, and Lines 304 to 320 could be simplified into one horizontal spreadsheet-like calculation. This simplification would make the calculations clearer and reduce the chance that an error would be made in copying numbers from one line to another. Only three columns would then need to be completed, and they would correspond to Column (b) of Lines 304 to 310, and Columns (b) and (c) of Lines 312 to 318. This would cut in half the number of columns used to calculate the number portability contribution. The revised table would look

⁹ Id. paras. 32-47.

something like the following (for simplicity, only one region is listed):

Region	Percent of Revenue Provided in Region (a)	Factor for Region (b)	Basis Times Factor Times Percent (c) = (a) x (b) x Line 303
Southeast	%	0.0000xx	\$

If necessary, the definitions of each region, which currently are contained in the first column of Lines 304 to 310, could be moved to the Instructions.

Blocks 5 and 6: Calculation of TRS and NANPA Contributions

BMJD supports the Commission's decision to eliminate the minimum mandatory contribution of \$100 for the TRS and NANPA programs. Small carriers have small revenues. Without the minimum mandatory contributions, their contributions will better reflect their size. Also, because paging carriers, for example, do not need to provide TRS, a reduction in their contributions would better reflect the fact that their customers do not contribute to the costs of TRS.

Block 7, Line 402: Section 43.21 Information

The instructions for Block 7, Line 402 should clarify which carriers are and are not required to file reports pursuant to Section 43.21 of the Commission's Rules, and therefore which

carriers should and should not fill in Block 7, Line 402. The Instructions currently state that the requirement applies to a "miscellaneous common carrier (as defined in 47 C.F.R. § 21.2 of this chapter) with operating revenues for a calendar year in excess of the indexed revenue threshold, as defined in § 32.9000." This phrase may make sense to some carriers, but many other carriers likely will wonder whether it applies to them. At a minimum, the instructions should list the types of service providers that may skip Line 402. The instructions also should list the services for which Line 402 applies, and provide the "indexed revenue threshold" so that providers of those services will be able to determine whether their revenues exceed the threshold and therefore whether Section 43.21 reporting is required.

Block 7, Line 409: Services Accessible by Individuals with Disabilities

The Commission requests carriers to certify that they have made their services accessible to and usable by individuals with disabilities to the extent readily achievable. However, the Commission has yet to define the criteria it will use to determine whether a carrier has complied with this requirement. In particular, the Commission has not defined what "readily achievable" means.¹⁰ Carriers should not be required to make the

¹⁰ See Implementation of Section 255 of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, FCC 98-055, WT Docket No. 96-198, paras. 99-100, released April

certification in Line 409 until clear-cut rules are in place.

In addition, the certification is misplaced. The purpose of the Telecommunications Reporting Worksheet is to obtain information to calculate contributions to the universal service, TRS, NANPA and number portability programs.¹¹ There are no contribution requirements associated with making services accessible to individuals with disabilities, and certainly no requirement that revenue information be provided. If the Worksheets were to be made available to individuals within the Commission responsible for the rules concerning accessible services, the number of people with access to revenue information would increase, thereby increasing the possibility of inadvertent disclosure of the revenue information.

In sum, the certification requirement is premature and misplaced. The Commission should eliminate Line 409.

Block 7, Line 415: Confidentiality

BMJD applauds the Commission's proposal to permit carriers to request confidentiality of their revenue data submitted for universal service, TRS, NANPA and number portability administration purposes by simply checking a box on the Worksheet.¹² However, the Commission's intent in this regard is

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¹¹ See Instructions at 2.

¹² NPRM para. 59; Instructions at 30.

not clear, as discussed below. BMJD therefore proposes several changes to the Worksheet and the corresponding rules.

In the NPRM para. 59, the Commission states that carriers will be able to check the box on Line 415 in lieu of submitting a separate request pursuant to Section 0.459 of the Commission's Rules. But the text of Line 415 is incomplete. It states:

I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information, except to the limited extent authorized in line 402, would likely cause substantial harm to the competitive position of the company.

This text does not request nondisclosure. The following sentence should be added to the beginning of Line 415:

I request nondisclosure of the information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.

Sections 0.459, 52.17, 52.32, 54.711 and 64.604 of the Commission's Rules also should be changed to state that nondisclosure may be requested on the Telecommunications Reporting Worksheet. Section 0.459 should be modified to add a new subsection 0.459(i) stating:

Notwithstanding the provisions of paragraphs (a), (b), (c) and (f), a carrier may request confidentiality of information reported on the Telecommunications Reporting Worksheet by checking the appropriate box therein. Such request will be accorded the same procedural protections provided in paragraphs (d) to (h) for requests submitted pursuant to paragraphs (a) and (b).

Proposed Section 54.711, which applies to universal service reporting requirements, states:

Contributors may make requests for Commission nondisclosure of company-specific information under § 0.459 of this chapter at the time that the subject data are submitted to the Administrator.

But this proposed rule does not state that the request for non-disclosure may be made by checking the appropriate box on the Worksheet. Thus, the following sentence should be added to proposed Section 54.711:

A request for Commission nondisclosure pursuant to Section 0.459 may be made by checking the appropriate box on the Telecommunications Reporting Worksheet.

The same sentence should be added to the end of Proposed Section 64.604(c)(iii)(4)(I) (for TRS), as a new section 52.17(c) (for NANP), and to the end of Proposed Section 52.32(c) (for number portability).

These changes would help to ensure that a carrier's request for confidentiality will be honored by the Commission and all programs that use the Worksheet.

Other Issues

Contribution Checks - The payees for the contribution checks should be specified along with the mailing addresses given at the bottom of the last page of the Worksheet. Much confusion has existed in the past as to the identity of the payee for the existing contribution mechanisms. The payee should be specified in the Worksheet and in the corresponding instructions. In particular, Figure 4 of the Instructions, which provides the

mailing addresses for the checks, should specify the payee for each of the checks.

Telephone Numbers for Questions About the Worksheet - BMJD supports the Commission's inclusion of telephone numbers that carriers may call to obtain information about completing the Worksheet. However, the Commission needs to make the list on page 12 of the Instructions consistent with the list on page 32. In particular, the telephone number of the Common Carrier Bureau Industry Analysis Division, which appears on page 32, should be included on page 12.

Due Dates - The Instructions state:

If April 1 or September 1 is a non business day, worksheets are due the preceding Friday.¹³

But this instruction does not define "non-business day" and assumes that non-business days are always Mondays. The instruction should be replaced with the following sentence:

If April 1 or September 1 is a holiday (as defined in Section 1.4(e)(1) of the Commission's Rules), worksheets are due the next business day.

USAC Exemption Certification - The Commission states that carriers who are exempt from universal service contributions will not need to file a Worksheet for that purpose in April nor in

¹³ Instructions at 10.

September.¹⁴ However, USAC routinely requests carriers to file a "Certificate of De Minimis Exemption" even in cases where USAC previously received a Worksheet or Certificate demonstrating that the carrier is exempt, and where USAC received a letter from the carrier's attorney asking USAC not to request the exempt carrier to file Worksheets or Certificates. The Commission is correct to eliminate form filing requirements where there is no need for a form to be filed. The Commission should explicitly prohibit USAC from requiring exempt carriers to submit any forms, including USAC's "Certificate of De Minimis Exemption." Thus, a new sentence should be added to the end of proposed Section 54.705 of the Commission's rules to state:

The administrator shall not request a carrier that is exempt from contribution requirements to complete and submit any forms concerning its exempt status.

Universal Service Exemption Calculation - The calculation that determines whether a carrier is exempt from universal service contributions also needs to be clarified. The existing rules for universal service state that a carrier determines whether it is exempt based on a calculation using factors that are not the same as the factors that USAC will use to determine contribution amounts. For example, on page 8 of the Instructions, factors of .015 for total revenues and .031 for interstate and international revenues are used. But the current

¹⁴ 47 C.F.R. § 54.705 (proposed).

contribution factors are .0075 and .0314, respectively.¹⁵ Thus, it is possible that a carrier may not be "exempt" by the calculation described in the Instructions, while still owing a contribution of less than \$10,000 when the actual contribution factors are used. This discrepancy between the Instructions and the actual contribution factors has existed ever since the Universal Service Worksheet was developed.

Not only have carriers been confused by this discrepancy, but the proposed rules add to the confusion. Proposed Section 54.705 states that the criteria for determining whether a carrier is subject to the de minimis exemption is whether the "contributor's contribution to universal service in any given year is less than \$10,000." There are two problems with this provision. First, there is no "contributor" and no "contribution" if the carrier is exempt. Second, the rule does not state how the "contribution" should be calculated. Thus, the proposed rule should be changed to state:

If a carrier's estimated contribution, using the actual contribution factors announced by the Commission via Public Notice, would be less than \$10,000

Electronic Filing - The Commission proposes to permit carriers to electronically file the Worksheet, ostensibly to

¹⁵ Third Quarter 1998 Universal Service Contribution Factors Revised and Approved, Public Notice, CC Docket No. 96-45, DA 98-1130, released June 12, 1998.

greatly reduce the filing burden on small carriers.¹⁶ The best way to implement electronic filing would be to provide a form-filing mechanism that could be run on the Internet using the leading Web browsers -- similar to the way that the FCC permits carriers to file tariffs or comments electronically. No special software would be needed, and there would be no associated costs with obtaining, installing and learning the software. If an Internet-based solution were not adopted, the Worksheet filing software should be distributed for free by the FCC, and there should be no added costs for connect time when submitting a Worksheet. Otherwise, the cost of obtaining and using the software would undermine the Commission's goal of reducing the filing burden on small carriers and its proposal to reduce their costs by eliminating the mandatory minimum contributions for the TRS and NANPA funds.

Also, regardless of whether the software would be based on the carrier's computer or on the FCC's Web site, the software must be Year 2000 compliant and allow carriers to edit their Worksheet if errors are detected after the Worksheet is submitted.

Furthermore, security should be paramount. Not only should the FCC provide security for the transmission of information to the administrators, but it should also provide security for the information once it is received by the administrators so that

¹⁶ NPRM para. 60.

hackers would not be able to access the data. The Commission has recognized that carriers need to request confidentiality of their revenue information. It should extend confidentiality protections to the electronic filing mechanisms.

Interest for Improper Filing and Overdue Contributions - The FCC proposes to permit the administrators of the TRS, NANP, universal service and local number portability programs to assess reasonable administrative expenses and interest resulting from improper filing or overdue contributions. But the FCC does not specify how the administrators will determine the interest to be applied. At a minimum, the interest rate should be determined by the Commission, not a third-party administrator. The Commission's rules should state explicitly what the interest rate will be. For example, in other situations, the Commission has used the rate for ten-year U.S. Treasury obligations.¹⁷ This rate could be applied to the case at hand.

However, the rule permitting the assessment of interest should be reciprocal. That is, if a refund is due the carrier, the Commission should pay interest to the carrier at the same interest rate that a carrier would need to pay to the Commission for overdue payments. While refunds may not be commonplace at the moment, the conversion to using the new Worksheet, combined with the implementation of electronic filing, may initially

¹⁷ 47 C.F.R. § 24.711(b)(3).

result in unforeseen errors and corresponding requests for refunds.

In sum, any requirement that carriers pay interest on late payments should be matched with a requirement that the Commission (and the third-party administrators) pay interest on amounts refunded to carriers. And the interest rate should be explicitly stated in the rules.

Information to Be Disclosed - The FCC states that it will make available to the public the names of carriers, the regions where they operate, the services they provide, the corporate headquarters addresses, the mechanisms to which they contributed, the telephone numbers provided for customer inquiries, the categories of revenue filed and the D.C. agent for service of process information.¹⁸ But the draft Worksheet contains other information such as the fax number and e-mail address of the contact person, and the fax number and e-mail address of the D.C. agent. If this information were placed in a public database, it would be easy to obtain these e-mail addresses and fax numbers for use in bulk mailings by individuals with whom the carriers have no business relationship. BMJD requests the Commission to keep fax numbers and e-mail addresses confidential, and not include it in any publicly available lists, files or databases.

¹⁸ Instructions at 29.

Future Changes to the Worksheet - The Commission proposes to delegate authority to the Chief of the Common Carrier Bureau to make changes to the Telecommunications Reporting Worksheet.¹⁹ BMJD supports this proposal. Any forms that the Commission requires carriers to file should be created and updated by the Commission, not a third party fund administrator. Otherwise, there is the danger of conflicting advice when questions arise concerning the use of the form.

One of the BMJD carriers recently received a USAC-created form and had questions about the applicability of the form to that carrier's circumstances. Upon calling USAC, the carrier's counsel was told that the carrier need not complete the form. Counsel then contacted the FCC, which explained that the form did apply to the carrier. If forms are created and updated by the FCC, such questions could be raised directly with the FCC, thus saving time and duplicative effort in obtaining answers to questions about the form.

As Blooston, Mordkofsky, Jackson & Dickens recommended in its comments on the plan of reorganization of the various fund administrators, such forms should be available in only one place on-line -- the FCC's forms page.²⁰ If the form is made available on other Web pages, carriers and their counsel will spend unnecessary effort attempting to determine which version of the

¹⁹ NPRM para. 55.

²⁰ Comments of Blooston, Mordkofsky, Jackson & Dickens, CC Docket No. 97-21, dated July 31, 1998, at 3.

form is the correct version to use. If the form is available only on the FCC's forms page, one can only assume that it is the most up-to-date version. Links can be provided from other Web pages to the FCC's forms page to assist carriers with finding the form.²¹

NOTICE OF INQUIRY

In response to the NOI, BMJD notes that the one item missing from the FCC's proposal to consolidate worksheets is a proposal to consolidate the payments.²² Carrier payments would be greatly simplified if the FCC were to permit them to write one check. If the Commission were to develop an electronic filing mechanism, the end result could be a calculation of the one amount due with instructions for where to send it. Simplicity, rather than increased regulatory burdens, should be the overriding goal in developing rules for these contribution mechanisms.

CONCLUSION

BMJD supports the creation of the Worksheet and the elimination of the existing universal service, TRS and NANPA worksheets. In response to the NPRM, BMJD requests the Commission to make the aforementioned changes to the proposed Worksheet, Instructions and rules so that the Worksheet

²¹ See id.

²² See NOI para. 64.

Instructions are easy-to-follow, the costs of completing the Worksheet are minimized, and the information provided by the carriers will be kept confidential. In response to the NOI, BMJD suggests that carriers should be able to write just one check for all of their contributions.

Respectfully submitted,

**53 TELECOMMUNICATIONS CARRIERS
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ATTACHMENT A

3 Rivers Telephone Cooperative, Inc.
All West Communications, Inc.
Arrowhead Communications Corp.
Baton Rouge Cellular Telephone Co.
Benton Cooperative Telephone Company
Big Sandy Telcom, Inc.
Bluestem Telephone Company
C.C. Cellular
C-R Telephone Company
California-Oregon Telephone Co.
Cameron Communications Corp.
Caprock Communications
Chautauqua & Erie Telephone Corporation
Columbine Telephone Company, Inc.
Delcambre Telephone Co.
Dubois Telephone Exchange, Inc.
Eagle Valley Telephone Company
Ellensburg Telephone Company
Farmers Mutual Telephone Cooperative
Granada Telephone Company
Hills Telephone Company, Inc.
Home Telephone Co. of Nebraska
Houma-Thibodaux Cellular Partnership
Hutchinson Telephone Company
Indianhead Telephone Company
Industrial Electronics
Inland Telephone Company
Jefferson Telephone Co., Inc.
Kadoka Telephone Company
Keystone Farmers Coop Telephone Co.
Loretel Systems, Inc.
Lubbock Radio Paging Service, Inc.
Mankato Citizens Telephone Company
Minnesota Equal Access Network Services
Mobile Phone of Texas, Inc.
Mobile Communications Service, Inc.
New Ulm Telecom, Inc.
Northland Telephone Company of Maine, Inc.
Northland Telephone Company of Vermont
Odin Telephone Exchange, Inc.
Pine Island Telephone Company
Pinnacles Telephone Co.
Professional Answering Service, Inc.
Radiofone, Inc.
Sidney Telephone Company
Sioux Valley Telephone
Sleepy Eye Telephone Company
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